

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

20-MJ-183-HKS

MICHAEL REGAN,

Defendant.

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**NOTICE OF CONSENT MOTION AND CONSENT MOTION**

THE UNITED STATES OF AMERICA, by and through its attorney, James P. Kennedy, Jr., United States Attorney for the Western District of New York, Caitlin M. Higgins, Assistant United States Attorney, hereby moves the Court for an extension of the Rule 48(b) dismissal set for July 12, 2021, for the reasons set forth in the attached affirmation.

DATED: Buffalo, New York, July 08, 2021.

JAMES P. KENNEDY, JR.  
United States Attorney

BY: /s/ Caitlin M. Higgins  
CAITLIN M. HIGGINS  
Assistant United States Attorney  
United States Attorney's Office  
Western District of New York  
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**AFFIRMATION**

STATE OF NEW YORK     )  
COUNTY OF ERIE         )     SS:  
CITY OF BUFFALO         )

**Caitlin M. Higgins**, being duly sworn, deposes and states:

1. I am an Assistant United States Attorney for the Western District of New York and assigned to my office's file regarding this action. This affidavit is submitted in support of the government's consent motion for an extension of the Rule 48(b) dismissal set for July 12, 2021.

2. On June 11, 2021, and based on representations made by the parties regarding the likely pre-indictment resolution of this matter, the Court adjourned the FRCP, Rule 48(b) date until July 12, 2021.

3. Since that date, the government has provided defense counsel with discovery and the parties have engaged in significant plea negotiations, including discussions regarding whether certain enhancements apply to the case at hand. The parties were close to finalizing a plea.

4. On July 7, 2021, the undersigned AUSA contacted defense counsel, Fonda Kubiak, AFPD, regarding one final adjournment in order to finalize the plea agreement in this case and allow time to schedule the plea. On July 8, 2021, defense counsel responded that the defendant was requesting new counsel and that she needed to contact the defendant in Niagara County to determine what he was doing. Prior to this email, the undersigned AUSA had no knowledge that the defendant was contemplating new counsel. To this date, the undersigned AUSA was engaging in good faith negotiations with defense counsel with the understanding that the parties were likely to reach a pre-trial disposition in this case.

5. On July 8, 2021, defense counsel stated that the defendant consented to the adjournment of the FRCP Rule 48(b) date based on the fact that the defendant will be asking the Court to assign him new counsel.

6. Accordingly, based on this new information and defendant's request for new assigned counsel, the parties are requesting a 45-day adjournment of the FRCP Rule 48(b) date to allow the defendant to request new assigned counsel, the court to assign new counsel, and new counsel to review the proposed plea in this case.

7. The parties are requesting that the Rule 48(b) date be extended to August 26, 2021, to allow the defendant to request and be assigned new counsel and allow new defense counsel time to review the plea in this case. Current Counsel for defendant, Fonda Kubiak, AFD, also stated to your affiant that the defendant joins in both the request for the adjournment and exclusion of time pursuant to the Speedy Trial Act.

8. Since the defendant is requesting new assigned counsel and will be prejudiced if the government indicts the case before he is assigned new counsel inasmuch as any post-indictment plea in this case will expose the defendant to harsher penalty, the ends of justice outweigh both the public's and defendant's interests in a speedy trial. Based on the foregoing representations, the exclusion of time in this matter is in the interest of justice and not contrary to the interests of the public and the defendant in a speedy trial pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (h)(7)(B)(iv).

WHEREFORE, it is respectfully requested that the Rule 48(b) dismissal date be set for August 26, 2021, and that the time from and including July 12, 2021, to and including August 26, 2021, be excluded from the Speedy Trial Act.

/s/ Caitlin M. Higgins  
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